



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 6, 2009

Orza Salone
DOC #944875
One Park Row
Michigan City, Indiana 46361

Re: Formal Complaint 09-FC-45; Alleged Violation of the Access to Public Records Act by the Kokomo Police Department

Dear Mr. Salone:

This advisory opinion is in response to your formal complaint alleging the Kokomo Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. It is my opinion the Department violated the APRA if the office received your request and did not respond to the request within seven days.

BACKGROUND

You allege that on January 6, 2009 you sent to the Department a request for access to records. You allege that as of the date of your complaint you had not received a response from the Department. Your complaint was postmarked on February 4, and my office received it on February 10.

My office sent a copy of the complaint to the Department and invited the Department to respond. To date my office has not received a response to the complaint.

ANALYSIS

The public policy of the APRA states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you allege you mailed the request to the Department on January 6. As of February 4, you had received no response. If the Department received your mailed request, the Department had the duty to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). If the office failed to do so, the agency violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the APRA if the office received your request and did not respond to the request within seven days.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Debbie Piercy, Kokomo Police Department